

Issued: May 17, 2001

D.T.E. 01-43

Petition of Fitchburg Gas and Electric Light Company for authorization and approval of (1) the issuance of up to \$14 million in long-term debt in the form of notes or debentures and (2) an exemption from the provisions of G.L. c. 164 § 15.

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APPEARANCES:

Patricia M. French, Esq.

LeBoeuf, Lamb, Greene & MacRae, L.L.P.

260 Franklin Street, 23rd Floor

Boston, MA 02110

FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

Petitioner

Matthew T. Morais, Esq.

Division of Energy Resources

70 Franklin Street, 7th Floor

Boston, MA 02110-1313

Intervenor

## I. INTRODUCTION

On April 11, 2001, Fitchburg Gas and Electric Light Company ("Company") petitioned the Department of Telecommunications and Energy ("Department") pursuant to G.L. c. 164, § 14 for approval to issue and sell long-term debt securities in the principal amount of up to \$14 million, with a maturity of not more than 30 years from the date of issuance, at par. As part of its petition, the Company requested an exemption from the requirements of G.L. c. 164, § 15. The Department docketed the filing as D.T.E. 01-43.

On May 4, 2001, the Division of Energy Resources ("DOER") filed a petition to intervene in the proceedings. Pursuant to notice duly issued, the Department conducted a public hearing at the Department's offices on May 7, 2001. At this hearing, the Department granted DOER's petition to intervene. The Department held an evidentiary hearing immediately following the public hearing. In support of its petition, the Company offered the testimony of Charles J. Kershaw, assistant treasurer for the Company. The evidentiary record consists of eight exhibits and five responses to record requests.

## II. DESCRIPTION OF THE PROPOSED FINANCING

### A. Issuance of Long-Term Debt

The Company proposes to issue and sell unsecured long-term promissory notes in a principal amount of \$14 million, at par, with a maturity of not more than 30 years (Exh. DTE 1-5). The notes feature an interest rate of 7.98 percent, payable semiannually, annual sinking fund payments of \$2,800,000 beginning on the 26th anniversary of the date of issue, and optional redemption of the notes in amounts of at least \$100,000 plus accrued interest and a make whole premium (id.). The proposed debt will be placed privately to two or more institutional investors under the auspices of the Company's investment banker, Merrill Lynch (Exh. FG&E-1, at 5).

The Company claims that the proceeds from the proposed issuance of the long-term debt will be used to retire short-term debt and fund capital additions on its utility plant (id. at 2). The Company states that the short-term debt was used (1) to fund expenditures for capitalizable additions, as well as for the acquisition, extension, and improvement of utility plant and property and (2) to finance investments in its utility operations (id. at 2; DTE 1-2; Tr. at 14).

### B. Exemption from G.L. c. 164, § 15

The Company contends that it would be in the public interest for the Department to grant an exemption from the competitive bidding and publication requirements of G.L. c. 164,

§ 15 in the present case because there is already a measure of competition in its private placement process (Exhs. FG&E-1, at 6; DTE 1-1; RR-DTE-2). In addition, the Company claims that its investment banker directs its efforts towards institutional investors that balance their portfolios with debt issuances similar in size and liquidity to the one proposed by the Company (FG&E-1, at 6). Therefore, the Company argues, the benefits normally inherent in publication and competitive bidding are largely inapplicable in this case, and such a process is not likely to yield a more favorable interest rate or more favorable terms, but rather, is likely to be more expensive (Exhs. FG&E-1, at 6; DTE 1-1).(1)

### III. CAPITAL STRUCTURE OF THE COMPANY

As of December 31, 2000, the Company's total capitalization amounted to \$86,730,657 (Exhs. FG&E-1, Sch. D; RR-DOER-2). This included \$43,000,000 in long-term debt, \$12,444,400 in common stock, \$10,182,857 in premiums paid on common stock and \$2,272,400 in preferred stock, with the remaining balance represented by retained earnings (Exh. FG&E-1, Sch. E; RR-DOER-2 ). The corresponding capital structure ratios are 50.4 percent equity and 49.6. percent long-term debt (Exh. FG&E-1, Sch. D).

As of December 31, 2000, the Company's utility plant in service was \$115,456,847, with accumulated depreciation of \$31,412,107, resulting in net utility plant of \$84,044,740

(id., Sch. E). The Company's capitalization as of the same date, was \$67,899,657 (id., Sch. D). After the pro-forma issuance of \$14,000,000 and a March 31, 2001 sinking fund payment of \$3,000,000 associated with Fitchburg's 8.55 Percent Series Notes, the Company's long-term debt would increase by \$11,000,000 (\$14,000,000 minus \$3,000,000), resulting in a pro-forma capitalization of \$78,899,657, excluding retained earnings (\$67,899,657 plus \$11,000,000) (id., Schs. D, E). Therefore, the excess of utility plant after the proposed issuance would amount to \$5,145,083 (\$84,044,740 minus \$78,899,657).

### IV. STANDARD OF REVIEW

In order for the Department to approve the issuance of stocks, bonds, coupon notes or other types of long-term indebtedness(2) by an electric or gas company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess that the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. *Fitchburg Gas & Elec. Light Co. v. Department of Public Utilities*, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing *Fitchburg Gas & Elec. Light Co. v. Department of Public Utilities*, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine whether the Company has met the net plant test.(3) *Colonial Gas Company, D.P.U. 84-96* (1984).

The Supreme Judicial Court has found that, for the purposes of G.L. c. 164, § 14, "reasonably necessary" means "reasonably necessary for the accomplishment of some

purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." Fitchburg II at 836, citing Lowell Gas Light Co. v. Department of Public Utilities, 319 Mass. 46, 52 (1946). In cases where no issue exists about the reasonableness of management decisions regarding the requested financing, the Department limits its Section 14 review to the facial reasonableness of the purpose to which the proceeds of the proposed issuance will be put. Canal Electric Company et al., D.P.U. 84-152, at 20 (1984); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990).

The Fitchburg I and II and Lowell Gas cases also established that the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance, and that the Department's authority to review a proposed issuance, "is not limited to 'perfunctory review.'" Fitchburg I at 678; Fitchburg II at 841, citing Lowell Gas at 52. Regarding the net plant test, a company is required to present evidence that its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding) and will continue to do so following the proposed issuance. Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

Where issues concerning the prudence of the company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision in such a case does not represent a determination that any specific project is economically beneficial to a company or to its customers. In such circumstances, the Department's determination in its Order may not in any way be construed as ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See, e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995).

Pursuant to G.L. c. 164, § 15, an electric or gas company offering long-term bonds or notes in excess of \$1 million in face amount payable at periods of more than five years after the date thereof must invite purchase proposals through newspaper advertisements. The Department may grant an exemption from this advertising requirement if the Department finds that an exemption is in the public interest. G.L. c. 164, § 15. The Department has found it in the public interest to grant an exemption from the advertising requirement where there has been a measure of competition in private placement. See, e.g., Berkshire Gas Company, D.P.U. 89-12, at 11 (1989); Eastern Edison Company, D.P.U. 88-127, at 11-12 (1988); Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). The Department also has found that it is in the public interest to grant a company an exemption from the advertising requirement when a measure of flexibility is necessary in order for a company to enter the bond market in a timely manner. See, e.g., Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). However, G.L. c. 164, § 15 requires advertising as the general rule, and waiver cannot be automatic, but must be justified whenever requested.

## V. ANALYSIS AND FINDINGS

### A. Long-Term Debt

The Company's proposed financing consisting of the issuance and sale of long-term securities of up to \$14 million at a fixed interest rate of 7.98 percent, with a single maturity date that is no greater than 30 years from the date of issuance, is necessary either to retire short term debt or to fund capital additions (Exh. FG&E-1, at 2; RR-DTE-3; Tr. at 8, 12, 45-46). The proceeds of the sale will be applied to the retirement of short-term debt incurred by the Company to finance the expansion or replacement of investments in its utility operations, which is a legitimate purpose in meeting the Company's utility service obligations. Southern Union Company, D.T.E. 01-32, at 10. Accordingly, the Department finds that the proposed issuance is reasonably necessary to accomplish a legitimate purpose in meeting the Company's service obligations in accordance with G.L. c. 164, § 14.

In regard to the net plant test, the Department requires companies to demonstrate that their net utility plant equals or exceeds their total capitalization. Colonial Gas Company, D.P.U. 84-96, at 5 (1984). If a company's financing proposal fails to meet this requirement, G.L. c. 164, § 16 authorizes the Department to prescribe such conditions and requirements as it deems best adapted to make good within a reasonable time period the capital stock impairment. The record demonstrates that the Company's total capital stock and long-term debt will not exceed the Company's net utility plant following the issuance and sale of the long-term debt securities (Exh. FG&E-1, Sch. E). Accordingly, the Department finds that the Company's issuance of up to \$14 million in long-term securities meets the net plant test as provided in G.L. c. 164, § 16.

Issues concerning the prudence of the Company's capital financing have not been raised in this proceeding and the Department's decision in this case does not represent a determination that any project is economically beneficial to the Company or its customers. The Department's determination in this Order is not in any way to be construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing.

#### B. Exemption from G.L. c. 164, § 15

The Company has demonstrated that it selected an investment banker with broad experience in the bond market, access to potential institutional investors, and significant knowledge about the Company's financial needs (Exh. FG&E-1, at 6-8; Tr. at 18). The Company's investment banker solicited institutional investors for private placement of the issue through a competitive process (Exh. FG&E-1, at 6-7; RR-DTE-2). Based on the investment banker's assessment of market conditions, a public placement of the proposed issuance would be considerably more expensive, primarily due to the relatively small size of the issuance and the higher fixed cost of a public offering (FG&E-1, at 6). Moreover, the Company has demonstrated the benefits of timing its issuance to take full advantage of market conditions and to obtain maximum attention from potential investors (*id.* at 6-7; RR-DTE-2). In light of the foregoing considerations, the Department finds that a competitive bidding process would not provide any advantages for ratepayers over those offered by the Company's placement process, and that a competitive bidding process

could jeopardize the investors' interest already identified in these transactions, ultimately jeopardizing the financial benefits available to ratepayers under this private placement process. Therefore, the Department finds that it is in the public interest to exempt the Company from the advertising requirements in G.L. c. 164, § 15.

## VI. ORDER

Accordingly, after due notice, hearing and consideration, the Department hereby:

VOTES: That the issuance and sale by Fitchburg Gas and Electric Light Company, from time to time, of not in excess of \$14 million aggregate principal amount of long-term debt, is reasonably necessary for the purposes for which such issuance and sale has been authorized, pursuant to G.L. c. 164, § 14; and

VOTES: That the issuance of the long-term debt is in accordance with G.L. c. 164, § 16 in that the fair structural value of the Company's property, plant, and equipment held by the Company, will exceed its outstanding stock and long-term debt; and

VOTES: That it is in the public interest that the issuance and sale of said long-term debt be exempt from the requirements of G.L. c. 164, § 15; and it is

ORDERED: That the Department approves and authorizes the issuance and sale by Fitchburg Gas and Electric Light Company, in conformity with all the provisions of law relating thereto, of up to \$14 million principal amount of long-term debt securities with a maturity no later than 30 years from issuance, which debt securities carry an interest rate of 7.98 percent; and it is

FURTHER ORDERED: That the Fitchburg Gas and Electric Light Company be exempt from all of the requirements of G.L. c. 164, § 15, as amended, with respect to the issuance and sale of said long-term debt securities; and it is

FURTHER ORDERED: That the net proceeds from such sale of all such Notes shall be used for the purposes as set forth herein; and it is

FURTHER ORDERED: That the Secretary of the Department shall within three days of the issuance of this Order cause a certified copy of it to be filed with the Secretary of the Commonwealth.

By Order of the Department

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Company's investment banker expressed an opinion that an offering of \$14,000,000 in size would have required an interest rate of at least 8.33 percent, had the debt been issued by public offering versus the 7.98 percent interest rate secured by the Company.
2. Long-term refers to periods of more than one year after the date of issuance. G.L. c. 164, § 14.
3. The net plant test is derived from G.L. c. 164, § 16.